

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
IN TACOMA

TOMMY BROWN,)	
)	
Plaintiff,)	No. CV20-680DGE
)	
v.)	
)	
TRANSWORLD SYSTEMS, INC,)	
et al.,)	
)	
Defendants.)	

SCHEDULING CONFERENCE

February 23, 2023

BEFORE THE HONORABLE DAVID G. ESTUDILLO
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff:

**Scott Borison
BORISON FIRM**

**Christina Henry
HENRY & DEGRAAFF**

**Phillip Robinson
CONSUMER LAW CENTER**

**For the Defendant
Transworld Systems,
Inc.:**

**Bryan Shartle
SESSIONS ISRAEL & SHARTLE**

**Emily Harris
CORR CRONIN**

**For the Defendant
Paternaude & Felix APC:**

**Marc Rosenberg
LEE SMART**

**For the Defendant US
Bank:**

**Albert Rota
JONES DAY**

**Thomas Abbott
PERKINS COIE**

**Proceedings stenographically reported and transcript
produced with computer-aided technology**

09:02:24AM

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1717 Pacific Ave - Tacoma, WA 98402

09:02:24AM 1 THE CLERK: This is the matter of Brown versus
09:02:28AM 2 Transworld Systems, Incorporated, Cause No. CV20-680DGE.
09:02:35AM 3 Counsel for plaintiff, please make an appearance.

09:02:38AM 4 MS. HENRY: Christina Henry, attorney for the
09:02:41AM 5 plaintiff.

09:02:43AM 6 MR. BORISON: Good morning, your Honor. Scott
09:02:45AM 7 Borison, also for the plaintiff.

09:02:46AM 8 MR. ROBINSON: Good morning, your Honor. Phillip
09:02:48AM 9 Robinson on behalf of the plaintiff.

09:02:51AM 10 THE CLERK: For defendants.

09:02:55AM 11 MR. ROTA: This is Albert Rota from Jones Day,
09:02:59AM 12 for U.S. Bank.

09:03:01AM 13 MR. ABBOTT: Thomas Abbott on behalf of defendant
09:03:05AM 14 U.S. Bank and the defendants Student Loan Trusts.

09:03:13AM 15 THE COURT: Mr. Rosenberg, we see your lips
09:03:17AM 16 moving but you are muted.

09:03:20AM 17 MR. ROSENBERG: I apologize. Marc Rosenberg for
09:03:24AM 18 defendant Patenaude & Felix APC.

09:03:29AM 19 MS. HARRIS: Your Honor, Emily Harris for
09:03:32AM 20 defendant TSI.

09:03:35AM 21 THE COURT: All right. Thank you and good
09:03:37AM 22 morning. I think everybody identified themselves for the
09:03:40AM 23 record. Just a note, so my kids' school was called for a
09:03:48AM 24 snow day today, so you might hear some people in the
09:03:51AM 25 background every once in a while yelling at each other,

09:03:54AM 1 and then you will see me immediately mute and probably
09:03:56AM 2 turn around and yell back at them to be quiet. FYI. I
09:04:01AM 3 have two teenage daughter and a boy who is almost a
09:04:05AM 4 teenager. They fight about everything. FYI. Just
09:04:08AM 5 letting you know.

09:04:09AM 6 Good morning and welcome, everyone. Glad to have you
09:04:12AM 7 all here. I want to talk about scheduling, of course, and
09:04:16AM 8 other issues that you identified in the joint status
09:04:19AM 9 report that was filed. I know everybody kind of knows
09:04:24AM 10 each other on this case because it has been around for a
09:04:27AM 11 little bit of time. Hopefully we can kind of discuss
09:04:30AM 12 about what we are doing and how we are going to accomplish
09:04:34AM 13 getting this case ready for trial and/or resolution.

09:04:37AM 14 I think the big issue first is just to talk about the
09:04:41AM 15 basic scheduling. Both parties have produced two proposed
09:04:44AM 16 schedules for the case to proceed.

09:04:48AM 17 A basic question, though, I have with regard to the
09:04:51AM 18 class certification, and this is for plaintiffs, I
09:04:55AM 19 suppose, what is your timeline? What do you think your
09:04:59AM 20 timeline is to do what you need to do in order to present
09:05:02AM 21 a motion for class certification?

09:05:04AM 22 MR. BORISON: Your Honor, this is Scott Borison.
09:05:07AM 23 The timeline is depending on -- it is really dependent on
09:05:12AM 24 the discovery we are able to access. I would think we
09:05:15AM 25 would be in a position in a period of anywhere from 120 to

150 days to file a motion for class certification.

THE COURT: And the reason I ask that is, of course, both parties raised the one-way intervention rule. Each side says, hey, the other side should not be allowed to file a response to the motion until the class certification issue is dealt with. That just tells me, well, geez, I think both parties are probably right. We probably need to get the class certification issue resolved before we hear any dispositive motions. Again, both parties are raising the same issue as to why the other side should not be allowed to file some type of responsive motion.

My thoughts are, I want to see a scheduling order that first focuses on class certification and anything that needs to be done in order to have the parties ready to brief that, and then argue it, of course, and then the Court should make a decision.

I'm going to try to share my screen here, if I can, and show you what I pulled from another case that we have had before. One second as I try to figure out how to do this. I used to be able to know how to do this. There we go. Share screen. Can you see that, what I have just put up there?

MR. ABBOTT: Your Honor, can you make that a little bigger?

09:06:59AM 1 THE COURT: Yeah. So this is what was done in
09:07:02AM 2 another case. Basically we identified dates for
09:07:06AM 3 disclosure of any experts related to the class
09:07:09AM 4 certification, basically focused on discovery related to
09:07:14AM 5 class first, and then set a briefing schedule, and then,
09:07:19AM 6 of course, a hearing to determine as is required by the
09:07:24AM 7 court. And then after the court makes a decision on the
09:07:27AM 8 class certification, we come back together and set a more
09:07:31AM 9 formal schedule for opt-out period, any disclosure or fact
09:07:35AM 10 discovery, basically dispositive motions, et cetera, and
09:07:37AM 11 then identify the trial dates.

09:07:40AM 12 That's what I am thinking needs to be done in this
09:07:42AM 13 case, again, for the sole reason -- not the sole reason,
09:07:45AM 14 but the major reason is both parties agree the class
09:07:51AM 15 certification needs to be determined first before the
09:07:51AM 16 other side is allowed to file their motion for a
09:07:56AM 17 dispositive -- a dispositive motion, rather.

09:08:00AM 18 MR. BORISON: Your Honor, from the plaintiff's
09:08:02AM 19 perspective, that's fine. The one issue I would raise
09:08:04AM 20 with the Court is the bifurcation of discovery. The
09:08:08AM 21 reason I raise that is because my experience is when we
09:08:11AM 22 start bifurcating between class and merits discovery, so
09:08:15AM 23 to speak, what ends up happening is we have collateral
09:08:19AM 24 litigation as to what's the scope of the discovery that we
09:08:22AM 25 are conducting at the time. It seems to bog down the

ability to go ahead and complete the discovery necessary to meet the schedule.

The only -- What I would suggest -- The other part of that, your Honor, sometimes what ends up happening is if we are limited to class discovery, so to speak, the response or opposition often goes into merits issues, explaining why the case shouldn't go forward as a class.

I have no problem with the schedule that you are proposing. I am bringing up the issue, if I understood you correctly, saying bifurcating the discovery to limit it to strictly class issues.

THE COURT: I will hear from defense on this issue. Maybe I'm going a little too far on that. Maybe that's not exactly what I was hoping to express. I do think discovery needs to be done, no matter what, as to the merits of the case. And I don't disagree, why put that on hold? That should probably go forward.

What I want to do before setting any trial dates, any final deadlines for quote/unquote dispositive motions and closing discovery, I want to set those off until after we make a decision on class certification. That's really my goal, let's get these deadlines put into place for class certification. But I don't disagree that ultimately the parties need to do discovery on the merits of the case. There is probably no reason to put that off, I suppose.

09:09:55AM 1 There really isn't, because it is going to happen.

09:09:58AM 2 Let me hear from defense. Thoughts on a schedule?

09:10:03AM 3 My thought, again, is just to put this type of schedule in
09:10:06AM 4 for the sole purpose of setting a hearing date and/or
09:10:10AM 5 noting date for the class certification motion. But it's
09:10:15AM 6 not to limit discovery solely to the class issues. But I
09:10:20AM 7 do want this type of schedule so that we can focus on
09:10:23AM 8 class first, and then set another schedule afterwards,
09:10:28AM 9 after we determine class. But thoughts from any defense
09:10:32AM 10 counsel on this type of schedule?

09:10:38AM 11 MR. ROTA: Sure, your Honor. This is Al Rota
09:10:42AM 12 from U.S. Bank. On the initial issue of the one-way
09:10:43AM 13 intervention rule, that rule exists to protect defendants
09:10:49AM 14 from motions by plaintiffs -- dispositive motions by
09:10:55AM 15 plaintiffs prior to class certification. Because, in
09:10:59AM 16 theory, if the plaintiff were to win a motion like that,
09:11:05AM 17 it would possibly apply, in the future, to class members
09:11:10AM 18 who would then want to opt in when perhaps they might have
09:11:14AM 19 wanted to opt out.

09:11:15AM 20 Whereas, if the defendant were to bring a motion
09:11:18AM 21 concerning an issue, which I think is what the defendants
09:11:21AM 22 contemplated here, one, that may not raise the specific
09:11:26AM 23 concerns that the one-way intervention rule exists to
09:11:30AM 24 protect. But, also, it would be the defendants that take
09:11:35AM 25 the risk that the decision on such a motion will only

09:11:40AM 1 apply to the main defendant, and the decision would not
09:11:43AM 2 then apply to potential class members. That's why we
09:11:52AM 3 proposed the scheduling in this matter.

09:11:53AM 4 And that kind of fits in hand with phasing the
09:11:56AM 5 discovery, in such a way that we could address what tends
09:12:01AM 6 to be the key issue in these types of cases, which is
09:12:05AM 7 whether or not the trusts owned the loans. That's why the
09:12:08AM 8 defendants proposed the schedule they did.

09:12:11AM 9 I believe that even if we were to go through the
09:12:15AM 10 schedule that you set forth here, your Honor, the merits
09:12:19AM 11 that Mr. Borison raised in terms of the class will likely
09:12:24AM 12 turn on, as they did in Hoffman before Judge Zilly, the
09:12:28AM 13 same types of ownership questions that would be raised by
09:12:31AM 14 such phase discovery as the defendants suggest.

09:12:38AM 15 MR. SHARTLE: This is Bryan Shartle on behalf of
09:12:42AM 16 the defendant TSI. I will try not to repeat what Mr. Rota
09:12:45AM 17 has stated. I do think, at a minimum, I would ask before
09:12:50AM 18 your Honor rule on this, if you are inclined to decide
09:12:53AM 19 certification, at least give us the opportunity to file
09:12:57AM 20 some papers on this, because there is a history behind the
09:13:01AM 21 one-way intervention rule.

09:13:02AM 22 As Mr. Rota explained, this rule was in place to
09:13:06AM 23 protect defendants. Historically plaintiffs would file
09:13:12AM 24 early motions to get a ruling on liability, and then class
09:13:18AM 25 members would intervene into a class action after

09:13:22AM 1 liability has been decided in favor of the plaintiff
09:13:25AM 2 class.

09:13:26AM 3 That, obviously, is sort of a perversion of the
09:13:29AM 4 process and encouraged classes where liability had already
09:13:33AM 5 been established.

09:13:35AM 6 Fast forward in time, as the comments to Rule 23 make
09:13:39AM 7 very clear, there are a lot of reasons now why defendants
09:13:44AM 8 may choose to have the liability issue decided first.

09:13:47AM 9 If they prevail on that motion for summary judgment,
09:13:51AM 10 as Mr. Rota just noted, that ruling is only going to be
09:13:54AM 11 binding on the named parties. It's not going to create
09:13:58AM 12 any binding liability for the class members. That's the
09:14:02AM 13 risk that defendants take by filing that early motion for
09:14:06AM 14 summary judgment, is that there could be a subsequent bite
09:14:10AM 15 at the apple in a separate case with an unnamed plaintiff
09:14:14AM 16 that was a class member in the existing case.

09:14:18AM 17 So that's the risk that the defendants take, but that
09:14:21AM 18 does not permit the plaintiffs to seek an early finding of
09:14:26AM 19 liability.

09:14:27AM 20 Again, the one-way intervention rule, which the
09:14:31AM 21 plaintiffs speak of here, is to protect defendants. So
09:14:35AM 22 the defendants are the ones that are asking for that
09:14:38AM 23 opportunity to file that motion. That does not mean that
09:14:42AM 24 the plaintiffs should be given the same opportunity.

09:14:44AM 25 And, again, there is quite a bit of commentary out

09:14:47AM 1 there. Even the Manual for Complex Litigation talks about
09:14:51AM 2 the fact that defendants should be given the opportunity
09:14:53AM 3 to file early dispositive motions if they so choose.

09:14:58AM 4 In this instance, it is going to avoid a lot of
09:15:02AM 5 expense and time for both the parties and the Court. And
09:15:06AM 6 so we ask that we be given that opportunity. And if your
09:15:10AM 7 Honor would like to see some papers on this issue, I have
09:15:14AM 8 previously briefed this issue before, this exact issue, as
09:15:17AM 9 to whether or not the plaintiffs should be given the
09:15:19AM 10 opportunity to file their early motion.

09:15:25AM 11 MR. ROTA: If I may, just dropping in here again?
09:15:27AM 12 I think the motions that the defendants have contemplated
09:15:30AM 13 focuses on an issue. That issue may or may not even raise
09:15:34AM 14 full liability. It may narrow some claims. But I'm not
09:15:39AM 15 sure that is a full liability determination. And if there
09:15:45AM 16 were papers, I think we would be able to clarify that,
09:15:50AM 17 your Honor.

09:15:51AM 18 THE COURT: Let me hear from any other defendants
09:15:53AM 19 first before I hear from plaintiff on this issue.
09:16:00AM 20 Plaintiffs' counsel, Mr. Borison?

09:16:05AM 21 MR. BORISON: Yes, your Honor. I think the
09:16:07AM 22 one-way intervention issue, as the Court framed it, is
09:16:09AM 23 really just a matter of fairness. They would like the
09:16:12AM 24 Court to go ahead and give them the opportunity to go
09:16:14AM 25 ahead and move for summary judgment early in the case

09:16:16AM 1 before class certification, as they have addressed. Not
09:16:21AM 2 only that, they want to limit discovery on those type of
09:16:24AM 3 issues so they tee up their motion without any sort of
09:16:28AM 4 discussion of the general.

09:16:31AM 5 The ownership issue is one of the issues, but the
09:16:35AM 6 claims that are here are the filing of complaints when
09:16:38AM 7 they don't have the proof in place. As well, that's what
09:16:40AM 8 the Court decided in the motion to dismiss, that it was a
09:16:44AM 9 matter of an unfair and deceptive practice how they went
09:16:48AM 10 about trying to collect these things when they didn't have
09:16:51AM 11 information available at the time of filing. So it is not
09:16:53AM 12 the only issue. It is not the determinative issue here.

09:16:56AM 13 The idea that we should go ahead and spend time on
09:16:59AM 14 just this sole issue for some period of time, I guess --
09:17:03AM 15 I'm not even sure what they are proposing as far as the
09:17:07AM 16 period of time, but to bifurcate or, you know, even
09:17:10AM 17 trifurcate the case, is basically what they are saying,
09:17:13AM 18 that there should be three phases. It should be a phase
09:17:16AM 19 dealing with their ability to file a motion for summary
09:17:18AM 20 judgment on a partial issue that does not resolve the
09:17:21AM 21 case, then we go to class certification, then we go to the
09:17:24AM 22 general merits.

09:17:26AM 23 All of that just creates collateral litigation in the
09:17:29AM 24 discovery phase of this case that is unnecessary.

09:17:32AM 25 The Court's proposal to go ahead and deal with the

09:17:35AM 1 class certification is a sound one, and one followed by
09:17:40AM 2 most courts. With the exception of the traditional --
09:17:44AM 3 years ago the traditional thing was to bifurcate the class
09:17:48AM 4 certification and also bifurcate the discovery. Given
09:17:52AM 5 recent cases, for instance Walmart versus Dukes, where the
09:17:56AM 6 Court said, no, you sort of have to delve into the merits,
09:17:59AM 7 that bifurcation issue -- the bifurcation of the motion
09:18:02AM 8 practice still exists, but the bifurcation of discovery
09:18:05AM 9 has basically disappeared, at least in my experience.

09:18:08AM 10 So I think there is no downside to -- We are going
09:18:12AM 11 to have to do this discovery going forward. And this idea
09:18:18AM 12 that, as far as the ownership issue, for instance -- At a
09:18:21AM 13 minimum, your Honor, keep in mind that this case comes
09:18:24AM 14 before you after there has been decisions from the state
09:18:27AM 15 court that are entitled to full faith and credit. At a
09:18:31AM 16 minimum, even if the Court doesn't give full faith and
09:18:35AM 17 credit and adopt the state court proceedings, there is
09:18:37AM 18 going to end up being some sort of factual issue based on
09:18:41AM 19 the state court pleadings and the state court motion
09:18:44AM 20 practice that would already exist.

09:18:47AM 21 The bottom line is, the idea that there is going to
09:18:50AM 22 be a summary judgment that is going to have -- be free of
09:18:54AM 23 any factual disputes is inaccurate here, because of the
09:18:58AM 24 state court proceedings that have already been determined,
09:19:02AM 25 that they did not -- that they were not able to show

ownership at that point.

So what they are proposing in this context is really just sort of a collateral case to be tried that's not going to resolve anything. Ultimately, we are just going to come back to the class certification.

I think we support the Court's idea of setting the class certification schedule, get that resolved, and they can raise whatever issues they want in contention -- in conjunction with the class certification.

We also have the economy of doing the discovery rather than taking a witness now, asking limited issues, and then coming back and having to depose that same person again, because, you know, the Court limited the discovery the first round. It just doesn't make any economical sense for anyone.

Again, we are fully in support of the Court's proposal, with the caveat that it shouldn't really limit the discovery to class certification issues, so to speak.

MR. ROTA: Your Honor, if I may?

THE COURT: Yes.

MR. ROTA: Just in response to Mr. Borison, I don't think there is a likelihood your Honor would have to have a three-phase case. If you were to agree with defendants that there could be a phasing as to the initial ownership question, it would still result, I believe, in a

09:20:34AM 1 two-phase, with the second phase moving straight to the
09:20:38AM 2 full merits and class certification issues that
09:20:43AM 3 Mr. Borison spoke about.

09:20:45AM 4 By having the phasing, you would eliminate the
09:20:49AM 5 concern about getting through class certification
09:20:55AM 6 (inaudible), hear the motion that the defendants have
09:21:06AM 7 proposed.

09:21:06AM 8 THE COURT: I'm debating in my head or
09:21:09AM 9 envisioning something that is kind of in between what both
09:21:12AM 10 sides want, and basically building into the same schedule
09:21:19AM 11 the same dates for your motion that you wish to file,
09:21:27AM 12 dispositive motion, basically putting in here plaintiff's
09:21:33AM 13 motion for class certification due on, and then pick a
09:21:36AM 14 date. And likewise, on that same date defendant's
09:21:40AM 15 motion -- dispositive motion on ownership issues, and
09:21:45AM 16 follow the same briefing schedule.

09:21:48AM 17 The only reason I am thinking about that is because
09:21:51AM 18 there may be some interplay between the ability -- Again,
09:21:58AM 19 I hear plaintiff's perspective, well, there are other
09:22:01AM 20 issues involved. But there may be some interplay between
09:22:04AM 21 whether or not the plaintiff would be an appropriate class
09:22:08AM 22 representative if in fact the defense dispositive motion
09:22:13AM 23 were successful. So there is kind of an interplay there.

09:22:19AM 24 I think to balance that, it may be best then to just
09:22:24AM 25 put the same deadline in for filing of class certification

09:22:31AM 1 and the same deadline for the dispositive motion that the
09:22:35AM 2 defendants want to bring. And still everybody doing the
09:22:39AM 3 discovery that needs to be done. And then we would still,
09:22:47AM 4 after we make decisions on the class certification
09:22:49AM 5 issue -- which, again, we will make a decision on the
09:22:52AM 6 summary judgment issue that defendants want to raise.
09:22:55AM 7 When we do both of those at the same time, then depending
09:22:59AM 8 on what pans out after that, we could then set final dates
09:23:03AM 9 for completion of discovery, which hopefully would be
09:23:06AM 10 fairly short by then, and a trial date that would work
09:23:09AM 11 with everybody.

09:23:13AM 12 MR. ROTA: I have one further question there,
09:23:15AM 13 your Honor. I can see the interplay that you raised in
09:23:20AM 14 terms of the named plaintiff and his ability to advocate
09:23:26AM 15 fully on behalf of the class. I'm not commenting on that
09:23:29AM 16 here, but I understand the issue.

09:23:33AM 17 Would the parties in what you just discussed have an
09:23:36AM 18 opportunity to brief final summary judgment motions after
09:23:41AM 19 the class certification question? I ask that because I
09:23:47AM 20 don't know if plaintiff is contemplating a motion. I
09:23:50AM 21 believe they have brought such motions in other cases.

09:23:54AM 22 I think outside of the ownership question, the
09:23:57AM 23 defendants would likely have other summary judgment issues
09:24:01AM 24 that they would be able to raise at the completion of
09:24:01AM 25 (inaudible).

09:24:06AM 1 THE COURT: My thought process was, yes, there
09:24:08AM 2 would still be a subsequent dispositive motion deadline
09:24:12AM 3 for both parties at that point.

09:24:17AM 4 MR. SHARTLE: Your Honor, I have one related
09:24:20AM 5 question. That deadline that you are talking about tying
09:24:21AM 6 the class cert motion deadline for the filing of
09:24:24AM 7 dispositive motion, that dispositive motion, again, I
09:24:28AM 8 would ask that it be limited to the defendant being
09:24:31AM 9 permitted to file a motion at that time, not plaintiff.
09:24:38AM 10 Again, that would, in my view, be contrary to the one-way
09:24:42AM 11 intervention rule.

09:24:43AM 12 If defendant decides to file an early motion that --
09:24:47AM 13 again, I would still ask that it be earlier than the class
09:24:50AM 14 cert deadline. But I hear your Honor. To the extent you
09:24:54AM 15 want that filing to occur simultaneously, that it only be
09:24:58AM 16 defendants that are permitted to file that, not
09:25:00AM 17 plaintiffs. And at any subsequent motion for summary
09:25:02AM 18 judgment, at some later point, defendants could rebrief
09:25:06AM 19 any other legal issue, and then at that time plaintiffs
09:25:09AM 20 could file any type of motion for summary judgment they
09:25:12AM 21 like.

09:25:17AM 22 THE COURT: The one issue that has popped into my
09:25:20AM 23 head, inevitably defendants are going to say, we believe
09:25:24AM 24 we have ownership of this -- have ownership of these notes
09:25:31AM 25 or loans. The counterargument from the plaintiffs will

09:25:39AM 1 be -- at least one of them will be, this issue has already
09:25:42AM 2 been decided and they are precluded from raising this
09:25:46AM 3 issue. And so inevitably it's almost as if -- Assuming
09:25:54AM 4 there is -- If in fact the Court were to deny your motion
09:26:00AM 5 based on that ground that defendant -- excuse me, that
09:26:04AM 6 plaintiffs argue this was already -- is precluded, it's
09:26:10AM 7 almost like a summary judgment motion, in a sense, the
09:26:13AM 8 other way. Because if I rule against you in favor of
09:26:17AM 9 plaintiff on that issue, then it's just a matter of them
09:26:23AM 10 turning it around and saying, your Honor, you already
09:26:26AM 11 ruled on it, basically, and we want the summary judgment
09:26:28AM 12 going the other way on this issue. So it is kind of going
09:26:31AM 13 to be decided almost -- potentially, that particular
09:26:34AM 14 issue.

09:26:35AM 15 MR. ROSENBERG: Your Honor, I think you could
09:26:39AM 16 decide it --

09:26:39AM 17 THE COURT: If I were to grant your motion -- I
09:26:39AM 18 apologize, Mr. Rosenberg. If I were to grant your motion
09:26:42AM 19 on that ground, then by definition I think plaintiff's
09:26:48AM 20 motion in the future, even though they might want to file
09:26:51AM 21 it again, would probably -- I would deny it right away,
09:26:54AM 22 saying, look, I already decided this issue by letting -- I
09:26:57AM 23 granted it on your side.

09:27:02AM 24 MR. SHARTLE: The only thing I would respectfully
09:27:05AM 25 disagree with, your Honor, is the denial of our motion is

09:27:07AM 1 just denial -- not necessarily some legal finding that
09:27:11AM 2 supports the plaintiff's theory, but that there are
09:27:15AM 3 genuine issues of material fact. I don't see that as
09:27:19AM 4 necessarily requiring a subsequent granting of a motion
09:27:22AM 5 the other way.

09:27:23AM 6 And I would say, respectfully, your Honor, that I
09:27:26AM 7 think this issue -- this is a pure legal issue as to
09:27:31AM 8 whether NCSLT meeting is evidentiary burdening, and a
09:27:37AM 9 state court trial is some kind of binding legal conclusion
09:27:41AM 10 that they don't own the loan. That is a simple legal
09:27:44AM 11 issue that I think we will be able to quickly resolve.

09:27:48AM 12 It is true that, as defendants point out, putting
09:27:52AM 13 forth all sorts of evidence, and plaintiff's counsel is
09:27:56AM 14 well aware of this evidence, they have seen it, as to why
09:28:00AM 15 trusts do in fact own these loans. And we are going to
09:28:03AM 16 present that to your Honor, and show you the caselaw that
09:28:05AM 17 there is no binding legal conclusion as the plaintiff
09:28:10AM 18 suggests here.

09:28:11AM 19 Again, I don't think that, if you were to not agree
09:28:14AM 20 with the evidence we present, that means that plaintiffs
09:28:19AM 21 ultimately prevail on their summary judgment. There is
09:28:23AM 22 the possibility of a gray in between area.

09:28:26AM 23 THE COURT: I think you're right, there probably
09:28:28AM 24 is a possibility of a gray in between area, but there is
09:28:32AM 25 also a possibility that there is no gray in between area.

09:28:37AM 1 It may in fact go the other way. You're right, there is a
09:28:41AM 2 possibility of a gray in between, but ultimately once we
09:28:44AM 3 make a decision we will find out if there is a gray in
09:28:48AM 4 between or not.

09:28:49AM 5 MR. SHARTLE: What about this -- as a
09:28:52AM 6 possibility, your Honor, what if we briefed the legal
09:28:54AM 7 issue of issue preclusion now? I mean, that doesn't
09:28:59AM 8 require any discovery. That is a legal brief on the law.

09:29:09AM 9 THE COURT: Hold on. Let me hear from plaintiff,
09:29:13AM 10 Mr. Rota, and then we will have you comment.

09:29:15AM 11 MR. BORISON: Your Honor, I think what you point
09:29:16AM 12 out is sort of the tension between how Rule 56 operates
09:29:19AM 13 and this issue of one-way intervention. Rule 56 basically
09:29:23AM 14 says, as the issues are presented to the Court, that the
09:29:26AM 15 Court can still -- whether it grants it in toto or not,
09:29:30AM 16 there are still determinations that can be made by the
09:29:34AM 17 Court as part of that proceeding.

09:29:37AM 18 One of the issues that's, you know, going to be
09:29:40AM 19 presented is what the Court has pointed out, which is what
09:29:43AM 20 if that state court finding is preclusive? Basically they
09:29:51AM 21 are asking you to do a modified version of the Rule 56,
09:29:54AM 22 don't do the full rule that provides for those type of
09:29:59AM 23 determinations by the court, even if the motion is not
09:30:02AM 24 granted in part. So they are really asking to modify
09:30:06AM 25 Rule 56 on the basis of a one-way intervention.

09:30:09AM 1 But it really doesn't make sense, because, first of
09:30:14AM 2 all, they are going to have to come in and say there is no
09:30:16AM 3 genuine issue as to a material fact which presents a legal
09:30:19AM 4 issue for the Court to decide. And if you decide that
09:30:22AM 5 legal issue against them, as the Court points out, that's
09:30:27AM 6 basically a ruling in favor of the plaintiff. So this
09:30:30AM 7 idea that somehow we can, you know, limit how you approach
09:30:33AM 8 Rule 56 in this particular instance is inconsistent with
09:30:39AM 9 how the rule is set up.

09:30:40AM 10 MR. ROSENBERG: Your Honor, Marc -- Sorry. I
09:30:42AM 11 thought you were done.

09:30:43AM 12 THE COURT: Mr. Rosenberg, it is going to be
09:30:45AM 13 Mr. Rota next.

09:30:47AM 14 MR. ROTA: Your Honor, I hear Mr. Borison,
09:30:50AM 15 Mr. Shartle, and your comments. What I might suggest here
09:30:55AM 16 is that we set up a schedule that gives the defendants the
09:30:59AM 17 option to file the contemplated motion at or around the
09:31:04AM 18 date of class certification motions, as you suggested. To
09:31:08AM 19 the extent we think there might be some kind of a legal
09:31:14AM 20 issue, the way that you have raised and then Mr. Borison
09:31:19AM 21 discussed, the parties can think through that prior to
09:31:21AM 22 making some kind of motion. If we have to, if we think it
09:31:25AM 23 is worthwhile, perhaps in advance we can meet and confer
09:31:29AM 24 with plaintiffs and request leave from you to file a
09:31:33AM 25 motion, such as Mr. Shartle suggested.

09:31:36AM 1 I think for purposes of setting a schedule now and
09:31:38AM 2 getting this case moving, I think that the defendants
09:31:42AM 3 should have the option, which they may or may not take, to
09:31:46AM 4 file a summary judgment motion on the issue of class
09:31:49AM 5 ownership at or around the same time as class
09:31:53AM 6 certification. And then I think we can cut through a lot
09:31:56AM 7 of the back and forth we just had.

09:32:01AM 8 THE COURT: Thank you. Mr. Rosenberg, one last
09:32:03AM 9 comment.

09:32:04AM 10 MR. ROSENBERG: Yes, your Honor. I think a
09:32:05AM 11 little bit of clarification might be helpful here. People
09:32:08AM 12 have been saying plaintiffs and defendants. There are
09:32:11AM 13 separate defendants. I believe it would just be the
09:32:13AM 14 trust -- Other defendant counsel can correct me if I'm
09:32:17AM 15 wrong. It is just the trust that would be moving on the
09:32:20AM 16 loan ownership issue.

09:32:22AM 17 In regard to my client, Patenaude & Felix, which was
09:32:27AM 18 the attorney in the underlying case, there would be no
09:32:30AM 19 issue preclusion. There is caselaw in Washington and
09:32:32AM 20 other caselaw basically saying issue preclusion or claim
09:32:37AM 21 preclusion does not apply to an attorney who did not have
09:32:42AM 22 an opportunity to defend their own interests in the
09:32:45AM 23 underlying case. And we can present that to you.

09:32:50AM 24 I would note, also, your Honor, plaintiffs had
09:32:54AM 25 indicated that basically it would limit discovery, they

09:33:00AM 1 may have to come back and, for example, depose someone
09:33:04AM 2 twice. But I would note, your Honor, if the Court does
09:33:07AM 3 permit the trust to proceed and make this motion, it would
09:33:11AM 4 only relate to the one loan in regard to Mr. Brown.

09:33:18AM 5 And then if the defendants were to prevail, there is
09:33:21AM 6 potentially a lot of non-parties and even parties who
09:33:26AM 7 would not need to give any discovery, at least certainly
09:33:29AM 8 not on certain issues.

09:33:31AM 9 I think the final thing I would say is, and this is a
09:33:34AM 10 minor point, I guess, plaintiffs also argued that somehow
09:33:38AM 11 the 12(b)(6) motion decided anything. It is just a motion
09:33:45AM 12 on the pleadings. The Court decided that the pleadings
09:33:49AM 13 plausibly state a claim. There were no findings on that.
09:33:52AM 14 So the statement that the Court made findings and
09:33:55AM 15 decisions in the ruling on the 12(b)(6), will not, I don't
09:34:01AM 16 believe, control the factual issues as they go forward on
09:34:04AM 17 the case.

09:34:06AM 18 I think that's what I was going to say, your Honor.
09:34:09AM 19 Thank you.

09:34:10AM 20 THE COURT: All right. Thank you, Mr. Rosenberg.
09:34:12AM 21 I also appreciate that last comment, the 12(b)(6) motion
09:34:17AM 22 basically at this point only does minor things which keep
09:34:22AM 23 the claims alive. Ms. Henry, you have a comment.

09:34:24AM 24 MS. HENRY: Your Honor, I was the attorney on the
09:34:27AM 25 state court case. It was a motion for summary judgment.

09:34:30AM 1 It was a dispositive motion in state court.

09:34:33AM 2 THE COURT: Thank you. I think this is what I'm
09:34:38AM 3 going to do: I'm going to have after this hearing -- My
09:34:44AM 4 share screen left. After this hearing I'm going to have
09:34:48AM 5 my courtroom deputy send you this table without these
09:34:54AM 6 dates. Again, these dates are from another case. I will
09:34:59AM 7 have my courtroom deputy send you this table, and then you
09:35:03AM 8 can modify it to also include a line -- or lines rather
09:35:07AM 9 for the single dispositive motion that the defendant
09:35:15AM 10 U.S. Bank has identified to correspond with the deadlines
09:35:21AM 11 for the motion for class certification. And then the
09:35:24AM 12 response, reply, et cetera, include that in there.

09:35:32AM 13 And I want the parties, of course, to meet and confer
09:35:35AM 14 to come up with dates, when they think they would have the
09:35:39AM 15 discovery necessary to present those motions, when they
09:35:42AM 16 think that discovery will be completed by, come up with
09:35:44AM 17 dates, and then fill in the responses. Hopefully the
09:35:49AM 18 parties can come to agreement with that.

09:35:52AM 19 If the parties cannot come to agreement on dates,
09:35:57AM 20 then, of course, file a joint status report that submits
09:36:03AM 21 from each side's perspective what they believe the correct
09:36:06AM 22 dates should be, I will review, and eventually I will just
09:36:11AM 23 pick dates that I think are appropriate given what the
09:36:13AM 24 parties have suggested.

09:36:15AM 25 But I am hoping the parties can come up with a

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09:36:17AM 1 schedule that they agree with based on this table that I
09:36:21AM 2 have here.

09:36:23AM 3 But I'm not limiting discovery, because, again, I
09:36:26AM 4 think the parties should move forward with discovery.
09:36:29AM 5 It's not limited simply to the class issues. Discovery is
09:36:33AM 6 available for all issues.

09:36:36AM 7 And once then we make decisions on that initial
09:36:39AM 8 discovery -- excuse me, the initial dispositive motion
09:36:44AM 9 that U.S. Bank wants to bring, and make a decision on the
09:36:48AM 10 class certification, once we do that we will then meet
09:36:51AM 11 again and finalize a final schedule for final dispositive
09:36:58AM 12 motions, pretrial dates and deadlines, and the trial date,
09:37:03AM 13 which hopefully won't be too far out, because most of the
09:37:06AM 14 discovery should have been done by now -- or by that point
09:37:09AM 15 in time.

09:37:11AM 16 Questions? Questions on that?

09:37:16AM 17 MR. BORISON: Your Honor, from the plaintiff, the
09:37:19AM 18 only question I have is, and it might help, I assume
09:37:22AM 19 whatever date the motions are due, that they would be the
09:37:26AM 20 same? I anticipate the defendants coming back and saying,
09:37:31AM 21 well, they should file theirs before the class cert. The
09:37:35AM 22 only thing I would ask is whether you anticipate that
09:37:39AM 23 deadline for motions would apply equally to both?

09:37:42AM 24 THE COURT: Right now I am saying they apply
09:37:45AM 25 equally to both. If the parties somehow think they can

09:37:49AM 1 reach agreement on a different date, I will leave that to
09:37:52AM 2 you to come up with an agreement. If you can't come up
09:37:55AM 3 with an agreement on that then the issue is flagged, and I
09:37:57AM 4 will decide the motion at the same time basically.

09:38:00AM 5 Again, I think there may be some interplay there. Of
09:38:02AM 6 course, we won't know until we see it. There may be some
09:38:05AM 7 interplay about is this an appropriate plaintiff for the
09:38:08AM 8 class, whatever the class is proposed to be, if in fact
09:38:13AM 9 this motion for the defense is granted would that still be
09:38:18AM 10 an appropriate plaintiff. That's why I think there is
09:38:21AM 11 some interplay there.

09:38:22AM 12 All right. I will ask the parties to -- When do you
09:38:26AM 13 think you can meet and confer and get back to me with a
09:38:29AM 14 proposed schedule, and/or a joint status report that says
09:38:32AM 15 here is plaintiff's proposed schedule, and here are the
09:38:37AM 16 other parties' proposed schedules? Three weeks? I know
09:38:40AM 17 there are many of you so I don't know how easy it is for
09:38:43AM 18 all of you to get together.

09:38:45AM 19 MR. SHARTLE: Your Honor, if you are willing to
09:38:47AM 20 give us three weeks, I think that would be great. We
09:38:49AM 21 would appreciate it.

09:38:50AM 22 THE COURT: Three-week deadline from today. That
09:38:52AM 23 puts us out to February 16th. You can meet and confer and
09:38:59AM 24 get us a joint agreed schedule. If not, then your
09:39:03AM 25 competing schedules filed in one document, so I can look

09:39:07AM 1 at one document by February -- March 16th.

09:39:13AM 2 MR. SHARTLE: Thank you, your Honor.

09:39:14AM 3 MR. ROSENBERG: Thank you, your Honor.

09:39:15AM 4 THE COURT: A couple of other issues I still want
09:39:17AM 5 to talk about. Obviously, we put in there the deadline
09:39:20AM 6 for any additional parties, 30 days from today's date or
09:39:26AM 7 from entry of the order. Also, 30 days for amended
09:39:28AM 8 pleadings. Initial disclosures, apparently have been done
09:39:33AM 9 already.

09:39:34AM 10 ESI, there was a suggestion from one side -- maybe
09:39:43AM 11 one individual defendant, I'm not sure if it was all
09:39:45AM 12 defendants, on a proposed ESI agreement. My default is
09:39:53AM 13 I'm not going to be here trying to wordsmith the ESI
09:39:56AM 14 agreement. Unfortunately -- I know the one defendant at
09:40:00AM 15 least has some thoughts on how that agreement should look
09:40:03AM 16 like. The reality is, I'm just not going to wordsmith it.
09:40:07AM 17 My default is the Court's model agreement. And it is my
09:40:12AM 18 hope that either the parties can agree to the model
09:40:15AM 19 agreement and/or modifications to it somehow. If not,
09:40:21AM 20 then I'm just going to default to the model agreement,
09:40:24AM 21 quite frankly.

09:40:25AM 22 But I do want the parties to meet and confer and see
09:40:27AM 23 if there are certain modifications to the model agreement
09:40:32AM 24 that they can agree on. So as part of this deadline in
09:40:34AM 25 three weeks, I will also want you to submit either an

09:40:37AM 1 agreed ESI agreement, or if you don't have one, then I
09:40:43AM 2 expect at least one party to submit the model agreement,
09:40:46AM 3 which I will likely then enter at that point in time.

09:40:50AM 4 So, again, hopefully you can meet and confer and come
09:40:53AM 5 up with an agreement to modify the model agreement. But
09:40:57AM 6 if not, then I expect at least one party to give me the
09:41:00AM 7 model agreement filled out with the proper action and all
09:41:02AM 8 that. And then I will just enter that if the parties
09:41:08AM 9 can't agree to modifications to it.

09:41:10AM 10 MR. ROSENBERG: Your Honor, Marc Rosenberg here.
09:41:12AM 11 I am not anticipating this will sway anything, but I have
09:41:20AM 12 certain objections to the current model ESI protocol which
09:41:24AM 13 was adopted by the court prior to the Zubulake cases and
09:41:28AM 14 prior to the Supreme Court's overhaul of the civil rules
09:41:31AM 15 in regard to the amount of discovery that can be done.

09:41:36AM 16 In my opinion, which of course doesn't control here,
09:41:41AM 17 yours does, the model ESI agreement could use an overhaul.
09:41:49AM 18 I don't think it's the best format. I have successfully
09:41:53AM 19 used many different agreements with parties rather than
09:41:58AM 20 the ESI protocol. It's my hope that we can do that here,
09:42:04AM 21 as well.

09:42:05AM 22 THE COURT: My only comment on that is our local
09:42:08AM 23 civil rules committee from our local Federal Bar
09:42:13AM 24 Association just reviewed the model agreement and made
09:42:15AM 25 changes to it within the last three months, I think.

09:42:19AM 1 MR. ROSENBERG: Oh.

09:42:20AM 2 THE COURT: Not that it would be major changes
09:42:24AM 3 that would address all of your concerns, quite frankly.
09:42:27AM 4 They looked at it, and they said, we think this is the
09:42:30AM 5 latest and greatest that we can propose at this time. We
09:42:34AM 6 are going with it unless, again, the parties think you can
09:42:39AM 7 change it somehow and agree to it. By all means, go ahead
09:42:42AM 8 and agree to it. I'm just not going to try to wordsmith
09:42:46AM 9 it.

09:42:47AM 10 I'm not as smart as the committee that was reviewing
09:42:50AM 11 it. I know some of you individuals probably have your
09:42:54AM 12 thoughts on why and how it could be tweaked. I don't feel
09:42:58AM 13 I'm in a position to really do that at this point in time.

09:43:01AM 14 MR. ROSENBERG: Thank you, your Honor.

09:43:03AM 15 THE COURT: Thank you. All right. Privileged
09:43:08AM 16 documents, I know there are going to be some issues that
09:43:11AM 17 were raised in the joint status report that was filed here
09:43:13AM 18 about privilege, especially because one of the defendants
09:43:16AM 19 is a law firm and, actually, they will have some arguments
09:43:19AM 20 about communications that possibly are privileged.

09:43:26AM 21 All I'm going to say to that is, I'm not going to
09:43:28AM 22 enter any type of order that says there is a blanket
09:43:31AM 23 waiver if there is not compliance with the rules. I think
09:43:34AM 24 the rules -- Rule 26(b)(5) talks about what needs to be
09:43:40AM 25 provided in a priv log. I will also say caselaw, if I'm

09:43:47AM 1 not mistaken, says, hey, to the extent the parties are
09:43:48AM 2 claiming it is privileged, it is their burden to make sure
09:43:51AM 3 they put forth information to confirm or for the Court at
09:43:55AM 4 least to evaluate and make a determination as to whether
09:43:58AM 5 it is in fact privilege communication or work product.

09:44:02AM 6 So to the extent you are not able to submit and
09:44:07AM 7 support the privilege basis, then that's going to be up to
09:44:12AM 8 you. That means your log better be complete, and it
09:44:17AM 9 better comply with the rule. Because if you have not
09:44:19AM 10 completed it and it is not in compliance with the rule, it
09:44:22AM 11 is very easy for me afterwards to say, you didn't meet the
09:44:25AM 12 rule -- you didn't meet your burden of proving it was
09:44:27AM 13 privileged, and it has been waived at that point. I will
09:44:30AM 14 just -- I am just putting you on notice, make sure you
09:44:33AM 15 comply with the rule.

09:44:34AM 16 But I am not going to enter an order at this point
09:44:36AM 17 saying, if there is noncompliance it is automatically
09:44:40AM 18 waived. I will have to look at it on a case-by-case
09:44:43AM 19 basis, frankly. You are on notice. You better make sure
09:44:46AM 20 you are supporting the basis for why you are claiming it
09:44:48AM 21 is privileged with all the information necessary to comply
09:44:51AM 22 with the rule. Because if it comes in front of me, again,
09:44:54AM 23 I'm going to say, one way or the other, either it meets
09:44:57AM 24 the rule and it is privileged or it doesn't meet the rule
09:45:00AM 25 and you failed to provide enough information to support

09:45:02AM 1 it, so now it has been waived. FYI.

09:45:07AM 2 With regard to objections, again, I know there were
09:45:13AM 3 some comments in there about objections. I think a lot of
09:45:15AM 4 us just in general -- I think attorneys and judges alike,
09:45:20AM 5 we don't like those blanket objections, quite frankly. I
09:45:23AM 6 don't know exactly what they do sometimes, because even
09:45:26AM 7 though they are blanket objections at the beginning, what
09:45:28AM 8 does that really mean, depending on what the individual
09:45:32AM 9 question or interrogatory may be or request may be?

09:45:35AM 10 Just make sure you follow the rules, both the
09:45:41AM 11 interrogatory rule and the request for production rule.
09:45:46AM 12 They must state -- your objections or grounds must be
09:45:49AM 13 stated with specificity. So to the extent you are raising
09:45:53AM 14 objections, you should make sure it is specific as to why
09:45:57AM 15 that particular request is objected to. Again, if this
09:46:03AM 16 comes up I will look at it, and if you haven't stated it
09:46:07AM 17 with specificity, your objection may be waived completely
09:46:11AM 18 at that point.

09:46:14AM 19 All right. By way of background, my normal practice
09:46:21AM 20 is -- for discovery disputes, my normal practice is for
09:46:25AM 21 the parties to meet and confer and submit a joint
09:46:27AM 22 statement of what the dispute is, kind of summarize it,
09:46:33AM 23 and then tell me. This way we can have a status hearing
09:46:36AM 24 and hopefully work through those issues.

09:46:38AM 25 I have found, in general terms, it is very helpful,

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09:46:42AM 1 because it either narrowed down the issues or we are able
09:46:45AM 2 to resolve the issues by way of a status hearing.

09:46:49AM 3 With that said, I think this case is going to be a
09:46:51AM 4 little bit more complicated, especially when it comes to
09:46:55AM 5 the issues of possible privilege issues, and possibly some
09:47:01AM 6 other issues. So I don't know if my standard discovery
09:47:06AM 7 process is going to work.

09:47:09AM 8 I think, though -- I guess I will hear from the
09:47:11AM 9 parties on this to see what they think, but I think I'm
09:47:14AM 10 going to bite on the suggestion that the parties should
09:47:18AM 11 use our Local Rule 37(a) as the means for resolving
09:47:25AM 12 discovery disputes. This way it's a joint document and I
09:47:29AM 13 know the parties have met and conferred, they have
09:47:32AM 14 discussed with each other what their positions are, they
09:47:35AM 15 have laid it out in one document. And then I can review
09:47:38AM 16 the motion in one document instead of getting five or six
09:47:41AM 17 motion -- not motions, but pleadings from each different
09:47:44AM 18 party, saying, here is why we think the other side is
09:47:47AM 19 wrong, et cetera. I would rather have it in one document
09:47:52AM 20 so I am not having to cross-reference different parties'
09:47:55AM 21 perspectives in different documents.

09:47:58AM 22 My suggestion -- not my suggestion, I am going to
09:48:00AM 23 impose the 37(a) Local Rule requirement for any discovery
09:48:05AM 24 disputes.

09:48:09AM 25 I will hear comments on this, but I think my mind is

09:48:13AM 1 set. It is up to you if you want to comment.

09:48:19AM 2 MR. BORISON: No comment from the plaintiff's
09:48:22AM 3 end.

09:48:23AM 4 THE COURT: That will be the issue then with the
09:48:26AM 5 discovery disputes. You are required to use 37(a) as the
09:48:30AM 6 method of bringing those to the Court's attention for
09:48:33AM 7 resolution.

09:48:36AM 8 Those are the only issues that I kind of picked out.
09:48:40AM 9 Obviously, some of it has already been resolved by way of
09:48:44AM 10 asking me to come up with a schedule. Are there other
09:48:47AM 11 issues that the parties think we need to discuss before we
09:48:50AM 12 leave today?

09:48:55AM 13 MR. ROBINSON: Your Honor, this is Phillip
09:48:57AM 14 Robinson on behalf of the plaintiffs. You just raised the
09:48:59AM 15 thought in my head, when we are presenting the motions
09:49:03AM 16 later or other issues, is it your Honor's preference and
09:49:07AM 17 for ease of the Court if we present the exhibits in some
09:49:09AM 18 kind of combined appendix, and then the motion papers cite
09:49:13AM 19 to the appendix pages as opposed to filing a bunch of
09:49:17AM 20 separate exhibits?

09:49:18AM 21 THE COURT: Actually, I have not done that
09:49:21AM 22 before, I will be honest. But that sounds more feasible
09:49:24AM 23 in my mind, because you're right, there will be
09:49:26AM 24 individuals -- I am just thinking about some of my other
09:49:30AM 25 cases, where stuff is duplicative and unnecessary, because

09:49:34AM 1 one side has already submitted it or a different party
09:49:36AM 2 submitted it.

09:49:37AM 3 How has that worked in your practice that you have
09:49:40AM 4 seen? Do the parties meet and confer ahead of time to
09:49:42AM 5 identify all documents that are cross-referenced? How do
09:49:46AM 6 the parties work it out?

09:49:47AM 7 MR. ROBINSON: Typically the parties try to work
09:49:50AM 8 it out. But then wherever possible they can cite to what
09:49:53AM 9 is already in the record. There is a case management
09:49:55AM 10 order I have from another case. We can confer, along with
09:49:58AM 11 the Court's suggestion, and see if we can provide some
09:50:02AM 12 language to that that we are all in agreement. I don't
09:50:05AM 13 think the defendants here disagree with trying to reduce
09:50:08AM 14 the amount of conflicting exhibits.

09:50:14AM 15 THE COURT: I agree. As part of your meet and
09:50:20AM 16 confer, please do discuss that procedure, see if you can
09:50:23AM 17 come up with some language that directs the parties on how
09:50:26AM 18 to submit exhibits when the motions come up. This way
09:50:29AM 19 everybody is working off one set versus trying to
09:50:33AM 20 cross-reference the different parties' declaration, and
09:50:36AM 21 whatnot. That would be very helpful I think to everybody.

09:50:39AM 22 MR. ROBINSON: Thank you, your Honor.

09:50:42AM 23 THE COURT: Any other issues that anyone thinks
09:50:45AM 24 we need to identify?

09:50:52AM 25 MR. BORISON: Nothing else from plaintiff, your

Honor.

THE COURT: I look forward to receiving no later than three weeks the proposed schedule, and, likewise, in receiving the ESI agreement or document. We will get those entered very soon thereafter.

Thank you, everyone, for being here. I appreciate your time. I'm sure we will be discussing this case again at some point here in the future.

MR. ROBINSON: Thank you, your Honor.

MS. HENRY: Thank you, your Honor.

MR. SHARTLE: Thank you, your Honor.

(Proceedings concluded.)

C E R T I F I C A T E

I, Barry Fanning, Official Court Reporter for the
United States District Court, Western District of
Washington, certify that the foregoing is a true and
correct transcript from the record of proceedings in the
above-entitled matter.

/s/ Barry Fanning
Barry Fanning, Court Reporter